

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In The Matter Of:)	
)	
Creation of A Low Power)	Docket MM 99-25
Radio Service)	

WRITTEN COMMENTS OF THE AMHERST ALLIANCE

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WRITTEN COMMENTS OF THE AMHERST ALLIANCE

**FCC Docket MM 99-25
In The Matter of:
Creation of A Low Power Radio Service**

January 18, 2008

THE AMHERST ALLIANCE hereby submits Comments on the FCC's
December 2007 Report and Order on translator reform and Low Power FM
(LPFM).

Executive Summary

- A. Founded in 1998, in Amherst, Massachusetts, The Amherst Alliance has played a key role in establishing and protecting the LPFM Radio Service. Amherst was also the first national advocacy group to call for both translator reform and protection of LPFM stations against displacement by new, relocating and/or upgrading full power stations.
- B. Amherst thanks and commends the Commission for imposing a 10-station limit on each applicant for translator licenses. We further thank and commend the FCC for making this limit retroactive, so that abuses posed by The Great Translator Invasion can be mitigated.
- C. Amherst does not oppose *the concept* of requiring LPFM stations to

meet certain “localism” requirements in return for the ability to displace certain translators and/or to receive protection against displacement for themselves. However, some Amherst Members have reservations regarding specific details of the contemplated “localism” criteria. It is Amherst’s present intention to remain silent

on this matter and encourage all its Members to speak for themselves.

- D. Amherst urges *extreme caution* by the FCC if it adopts the Prometheus Radio Project proposal for use of “contour-based methodology” by LPFM stations. Frankly, we doubt that some LPFM licensees could meet the tradeoff of much more demanding technical requirements.

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- E. In general, Amherst views the Commission’s recent decisions and proposals as a major step forward. Nevertheless, we believe the FCC must go further if it wishes to open the airwaves to a much broader range of information, opinion and entertainment. To this end, Amherst reiterates its strong support for a number of additional actions, which it has advocated on a number of past occasions:

- (1) Allow and invite applicants for LP10 licenses (1 to 10 watts) to join applicants for LP100 licenses (11 to 100 watts) when the new LPFM filing window is opened;
- (2) Allow and invite applicants with highly rural service areas (100% outside of any SMSA or Micro-SMSA) to propose LPFM stations of 250 watts, or even 1,000 watts;
- (3) Proceed with establishment of Low Power Radio stations on the AM Band, which the FCC has already considered in pending Docket RM-11287, by either issuing a final rule in that Docket or re-opening the Docket for the submission of new Low Power AM proposals;
And
- (4) Extend to the remaining Class D educational stations, which were (in effect) an early version of LPFM and are now “an endangered species”, whatever new options and/or protections are established for LPFM stations -- or, alternatively, allow and invite Class D educational stations to convert to LPFM status if they choose.

Information About The Amherst Alliance

Amherst is a Net-based, nationwide citizens' advocacy group for media reform in general and LPFM in particular. It was founded on September 19, 1998, at a meeting in Amherst, Massachusetts, and has been actively involved in many FCC deliberations over the ensuing 9 years. Among other accomplishments, Amherst played a key role in:

- (1) Persuading the FCC to establish an LPFM Radio Service;
- (2) Persuading Congress to blunt the worst aspects of the limits it placed on LPFM in 2000;

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And

- (3) Spearheading a successful Freedom Of Information Act (FOIA) Request for release of a Mitre Corporation study, which rebutted claims of interference from LPFM stations.

In addition, The Amherst Alliance was the first national advocacy group to urge the FCC to initiate translator reform. It was also the first to propose protecting LPFM stations from displacement by new, relocating and/or upgrading full power stations.

Amherst has not prevailed in its intensive efforts to block the In Band On Channel (IBOC) version of Digital Radio and to limit the commercialization of Broadband Over Powerlines (BPL) to those BPL technologies which do not generate serious interference. However, we take

pride in having placed important objections on the public record -- for possible consideration, later on, by Federal courts and/or future leaders of the FCC.

Thank You, FCC

We thank and commend the Commission for the progress it has made in addressing the important issue of translator reform. As the first national advocacy group to call for translator reform, we are heartened and delighted by the FCC's decision to:

- (1) Impose a 10-station limit on each applicant for translator licenses;
And
- (2) Apply the 10-station limit retroactively, thus restraining the handful of entities who sought far, far more than their fair share of licenses during The Great Translator Invasion.

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Displacement of Non-Local Translators By LPFM Stations

The FCC is also considering whether to allow LPFM stations to displace certain translators, at least when those LPFM stations meet new, tightened "localism" criteria.

Since Amherst itself has proposed allowing LPFM stations to displace satellite-fed translators, and other *non-local* translators, we view the Commission's contemplated policy as a step in the right direction.

With respect to the possibility of limiting such displacement authority to LPFM stations which meet new and tighter "localism" requirements, Amherst does not oppose this approach as *a concept*. However, some individual Members of The Amherst Alliance are concerned that specific *details* of the contemplated localism requirements may be too burdensome for some LPFM stations to meet. Other Members of Amherst do not appear to share these concerns.

In general, the concerned Amherst Members are located outside of (or on the peripheries of) metropolitan areas, where a large pool of potential volunteers is not available and other station resources are more limited than the LPFM norm. This is not the first indication that standards for LPFM should take into greater account how different circumstances can be for LPFM stations based outside of metropolitan areas.

In any event, for this particular matter, at this particular time, The Amherst Alliance has chosen to remain silent. We have encouraged all of our individual

Members to speak for themselves on this issue by filing their own Written Comments.

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Protection For LPFM Stations Against Displacement
By New, Relocating and/or Upgrading Full Power Stations

Amherst takes a similar position with respect to the Commission's contemplated protection -- against displacement by new, relocating and/or upgrading full power stations -- for those LPFM stations which meet new, and more demanding, localism criteria.

As the first national advocacy group -- indeed, the first party, period -- to call for protecting LPFM stations against displacement, we naturally view the Commission's contemplated approach as a major step forward. Further, as with the contemplated authority for some LPFM stations to displace "satellators" and other *non-local* translator stations, we do not object to *the concept* of linking this privilege to the new responsibility of meeting more stringent localism requirements. Again, however, we must report that some individual Members of The Amherst Alliance -- found mostly in locations outside of, or on the peripheries of, metropolitan areas -- have expressed concern about

whether their actual or envisioned LPFM stations will have the resources to meet all the specific *details* of the tightened localism criteria.

Therefore, Amherst will again remain silent regarding the *details* of the contemplated localism criteria, even as we affirm that *the concept* of such linkage is acceptable to us. Again, we are urging all of our individual Members to speak for themselves on this matter by filing their own Written Comments in this Docket.

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We also urge the FCC to pay particularly close attention to these *individual* Written Comments of current and aspiring LPFM licensees, as they describe the specific circumstances under which their actual or envisioned stations must labor. Perhaps there is an administratively feasible way that the FCC can “fine tune” its localism criteria to allow more flexibility for those LPFM stations which -- due to geography and/or demographics and/or some other basically external factor(s) -- simply cannot match the resources that some other LPFM stations might have.

Contemplated Use of “Contour-Based Methodology” By LPFM Stations

The Amherst Alliance urges the Commission to proceed with *extreme caution* if

it decides to adopt the proposal, presented by Prometheus Radio Project and certain

“other LPFM advocates” (most notably, the Media Access Project), to allow the use of “contour-based methodology” by LPFM stations.

For the benefit of the many current and aspiring LPFM licensees who have not yet heard of this Prometheus Radio Project proposal, and may read about it for the first time when they review these Written Comments by The Amherst Alliance, we include the full description and discussion of this proposal in the FCC’s recent Report & Order.

[Paragraph 79, page 33] Prometheus and other LPFM advocates argue that the Commission should adopt a more flexible “contour” methodology for the licensing of LPFM stations. Although full-service NCE [Non-Commercial Educational] FM stations are licensed to a contour methodology, it appears that these parties are urging the Commission to permit LPFM station licensing pursuant to the FM translator protection

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rule, Section 74.1204 of the Rules ... adoption of this standard would vastly expand LPFM licensing opportunities throughout the nation and

create the possibility of locating new LPFM stations in a number of major and spectrum-congested markets ...

[Paragraph 82, page 34] However, the FM translator technical rules include a second and essential requirement: the inflexible obligation

to resolve all *bona fide* actual interference complaints pursuant to Section

74.1203(a) of the Rules. A translator station that cannot resolve all complaints must suspend operations. The two Rules operate in tandem.

The flexibility of the Section 74.1204(d) rule is backstopped by the permanent Section 74.1203(a) secondary service obligation to resolve actual interference complaints.

[Paragraph 83] We tentatively conclude that the licensing of LPFM

Stations pursuant to the standards of Section 74.1204 of the Rules or other

“contour-based” methodology is in the public interest. We tentatively conclude that an LPFM station licensed under this standard would be required to resolve all actual interference complaints or cease operations.

We seek comments on this tentative conclusion. We also tentatively conclude not to allow the use of alternative propagation technologies, such

as Longley Rice, to show lack of interference. We seek comment specifically on whether it is appropriate to license LPFM stations to community groups, which often have limited resources and technical expertise, under a standard that subjects such stations to the constant risk

of being forced off the air if they cannot resolve interference complaints promptly. We also seek comment on whether it is appropriate to adopt

an LPFM technical licensing regime that would require the use of consulting engineers.

The Commission goes on to ask whether, in the event that the Prometheus proposal is adopted, LPFM stations which are already licensed should be “grandfathered” under the pre-existing rules.

We commend the Commission for describing the basic “tradeoff” in the Prometheus proposal more eloquently than we could have done.

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Our basic responses to the Commission are fourfold:

(1) **The Prometheus Radio Project, and its allies, speak for only part of the Low Power FM community -- not all of it. Prometheus was certainly not speaking for The Amherst Alliance when it presented this proposal to the FCC.**

We acknowledge that the Prometheus Radio Project is the largest single national advocacy group for current and aspiring LPFM licensees. Along with its allies -- most notably, the Media Access Project -- Prometheus speaks forcefully and powerfully for one *segment* of the LPFM community. That segment is large, but it does not encompass the totality of the LPFM community.

At the risk of some over-simplification, we can say that Prometheus and the Media Access Project generally speak for -- and adopt as their model -- the kind of LPFM station that is collectively managed and operated, usually (though not always) with some kind of linkage to movements for social change. While Amherst, Prometheus and the Media

Access Project all support ownership and programming alternatives to the standardized fare of large media megacorporations, Amherst wants to see more *small* businesses returning to the airwaves -- whereas Prometheus and the Media Access Project favor reducing the role of commercial media activity in general, regardless of whether the businesses are Clear Channel Communications or “Mom and Pop”.

Amherst is not filing these Written Comments to re-ignite the longstanding debate, over these basically philosophical issues, within the LPFM community. Our

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goal is simply to remind the Commission that there *is* such a philosophical debate within the LPFM community. Whether it manifests itself as a preference for or against airing commercials on Low Power Radio stations, or for or against following a “collective management” model when operating a Low Power Radio station, there *is* a continuing philosophical divide -- which can have tangible consequences.

In this case, Prometheus Radio Project did not seek Amherst’s views before it presented the “contour-based methodology” proposal to the FCC. Nor did Prometheus notify Amherst, either before or after the fact, of the proposal’s existence. Amherst, and its Members, and its allies, found out about the proposal by reading the Commission’s Report & Order.

Such unilateral decision-making by Prometheus is nothing new. Further, although Amherst has periodically tried to improve its communications with Prometheus, we concede that the organization's decision to adopt a unilateral decision-making style certainly falls within the range of legitimate prerogatives that Prometheus can claim.

The primary concern, from *our* perspective, is that the Commission may be under the false impression that Prometheus and its allies speak for the entire LPFM community.

They do not.

Thus, it sent a shiver down Amherst's metaphorical spine when the Commission referred to the contour-based methodology proposal as having been advanced by "Prometheus and other LPFM advocates". Instead, the Commission should have said "Prometheus and *certain* other LPFM advocates". The Prometheus proposal may have been backed by the Media Access Project, but it was never backed by -- or, for that

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matter, even known to -- other nationally known "LPFM advocates", such as Michigan Music Is World Class! or Christian Community Broadcasters.

Certainly, the proposal was never backed by, or known to, The Amherst Alliance.

We would have consulted with others in the LPFM community, including even Prometheus, before we took the step of proposing a risky new policy that

might place the very existence of certain LPFM stations in jeopardy. We would not have wanted to create license-threatening risks for other members of the LPFM community without learning the views of those parties in advance.

Again: We urge the Commission to bear in mind that Prometheus and the Media Access Project speak for Prometheus and the Media Access Project. The rest of us in the LPFM community can speak for ourselves. We can think for ourselves, too.

(2) We are deeply concerned that many current and aspiring LPFM licensees cannot meet the higher interference avoidance requirements that the Commission is considering as a “tradeoff” for using “contour-based methodology”.

The challenge of starting and operating a Low Power FM station attracts highly motivated people with the will and ability to “move up a learning curve” very quickly. Nevertheless, many LPFM station personnel are relative newcomers -- or even total newcomers -- to radio broadcasting. Others are experienced with one or more aspects of radio broadcasting, such as being On Air talent or raising money, but are not necessarily knowledgeable about radio broadcasting technology. Still others are indeed

knowledgeable about radio broadcasting technology, but simply lack the financial and/or logistical resources to match the abilities of a typical full power radio station.

We urge the Commission to remember that Low Power FM radio stations are supposed to “rise from the grassroots”. They are not miniature replicas of full power stations, nor are they intended to be.

Given this reality, it is Amherst’s considered judgment that -- under the tradeoff requirements envisioned by the Commission -- many LPFM stations would find it dangerous to utilize contour-based methodology, or would find it financially prohibitive to rely on consulting engineers, or both.

(3) To the extent that some prospective LPFM applicants are in fact able to meet the interference avoidance standards, the process of favoring such applicants may tend to prejudice the license allocation process against potential newcomers with relatively fewer resources.

The establishment of the Low Power FM Radio Service was the work of many hands and the product of many different individual visions.

Nevertheless, we believe there has been a general desire among the architects of the LPFM Radio Service -- both inside and outside of the

Commission -- to encourage a broad range of licensees by making the barriers to LPFM licensing as low as the public interest requires.

If all LPFM licensees -- or even simply all new applicants -- are required to meet higher technical standards, and to hire consulting engineers, then those LPFM

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applicants with relatively greater resources will tend to prevail over less fortunate LPFM licensees with lesser resources that are still adequate to meet the current requirements.

In that case, the FCC will have taken a major step toward replicating -- within the LPFM Radio Service -- the same bias toward “ability to pay” that rapidly decimated local and independent commercial stations once mandatory auctions were initiated.

(4) **If the Commission decides to proceed as indicated, it should proceed with extreme caution. The methodology should be allowed only on a case-by-case basis, involving either new LPFM applicants or displaced LPFM licensees, who:**

- (i) **Can demonstrate to the Commission that there is no other feasible way for them to broadcast (or keep broadcasting) in the contemplated location;**
And

- (ii) Can also demonstrate, through a detailed description of the station management's understanding of the interference avoidance requirements that the station must meet, as embodied in a notarized statement signed by at least three persons who are authorized to speak for the station, that the station management is fully informed of the higher interference avoidance standards that must be met in return for the privilege of using contour-based methodology.

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In short:

The Amherst Alliance urges the Commission -- indeed, *pleads* with the Commission -- to allow the leaders of LPFM stations to expose their stations to avoidable risk of license loss *only* if those LPFM stations would not be On Air otherwise.

Further, even in those cases, we urge the Commission to make sure that any station's acceptance of those risks is *fully voluntary* and *fully informed*.

An LPFM station is simply too valuable a community resource to be exposed to avoidable risks by over-confident and/or under-knowledgeable station leaders.

If this be paternalism, make the most of it.

Reiteration of Certain Previous Amherst Recommendations
For More Open Airwaves

While the retroactive 10-station limit for translator applicants is a truly major step forward, and some of the proposed new policies for LPFM stations may be helpful if they are implemented with care, there is more the Commission could -- and should do -- to promote a broader range of ownership and programming on the radio spectrum.

To this end, The Amherst Alliance reiterates some of the key recommendations it has proposed to the FCC on numerous past occasions.

Allowing Applicants To File For LP10 Licenses (1-10W)

(1) In the next filing window for Low Power FM licenses, allow and invite applicants for LP10 licenses (1 to 10 watts) to participate -- instead of continuing to limit filing windows solely to applicants for LP100 licenses (11 to 100 watts).

We are pleased that the Commission, after a “fallow period” of 7 years, will soon open the next “filing window” for LPFM licenses.

We also note the Commission’s statement that this will “probably” be *the last* filing window for LPFM licenses -- at least in “spectrum-congested areas” -- because all of the available frequencies for LPFM stations are likely to be filled before the time for another filing window comes around.

This state of affairs makes it *imperative* for the Commission to redeem at last its long-delayed promise to allow licenses for LP10 stations (operating at 1 to 10 watts).

Such LP10 stations, which were part of the FCC’s rule to establish LPFM stations in 2000, are uniquely empowered to find “holes in the spectrum” in spectrum-congested areas. In areas where the now-standard LP100 stations (running at 11 to 100 watts) are simply too large to “fit”, some LP10 stations may be able to find a niche in the spectrum.

LP10 stations offer “the last best hope” to bring Low Power FM to metropolitan areas where it is now absent -- or virtually absent.

Amherst Members have never understood why the Commission has allowed 7 years to pass without opening any filing opportunities for LP10

applications. Nor has the Commission ever offered any explanation for the 7-year delay.

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Whatever the explanation for this delay might be, the time to end the delay is now -- before “the last filing window” for LPFM stations, at least in spectrum-congested areas, has been held.

Allowing LP250 Stations (101-250W) in Highly Rural Areas

(2) **Also, in the strictly limited case of LPFM applicants whose proposed service areas are highly rural, allow and invite participation in the LPFM filing window by applicants for new LP250 licenses (101 to 250 watts), or possibly even LP1000 licenses (250 to 1000 watts).**

As we stated in our discussion of the Commission’s contemplated new localism criteria, LPFM stations in rural areas are “very different animals” from the urban and suburban norms. Rural LPFM stations tend to have radically smaller pools of potential listeners, potential donors and potential volunteers.

To offset these disadvantages, at least in part, The Amherst Alliance has long proposed that higher wattage ceilings should be instituted for LPFM stations based in “highly rural areas”.

While Amherst struggled for a while with different ways to define “highly rural areas”, the Bureau of the Census, at the U.S. Department of Commerce, developed an administratively simple solution in 2005. At that time, the Census Bureau began to measure and list *Micro* Metropolitan Statistical Areas (MMSAs) as a supplement to the much larger *Standard* Metropolitan Statistical Areas (SMSAs).

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Now, for the first time, it became possible to identify “large small towns” that form a middle ground between SMSAs like Los Angeles-Long Beach and rural expanses such as western North Dakota.

Bolstered by this new mechanism, and the data to go with it, Amherst proposed

to the FCC that it should establish and license LP250 stations (running at 101 to 250 watts) for proposed service areas that fall *entirely* outside of any SMSA or *Micro* MSA.

We did not propose -- but would not object to -- LP1000 stations (running at 101 to 1000 watts) if they are strictly limited to such highly rural areas.

This approach would prevent the use of LPFM stations as “rimshot” stations,

located outside of an SMSA or MMSA but beaming into it. At the same time, the higher wattage would give LPFM stations greater resources for

establishing themselves, and maintaining themselves, in areas that currently have little or no local radio at all.

The Bureau of the Census estimates that 12% of the U.S. population currently lives in areas that are not part of either an MSA or an MMSA. Since the FCC already allows some diversity in wattage ceilings based on whether a radio station is located East or West of the Mississippi, or located inside or outside of Alaska, why not allow diversity in wattage ceilings based on whether an LPFM radio station's service area is located is not located completely outside of an officially designated Metropolitan Statistical Area?

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Acting, In Docket RM-11287, To Create Low Power AM (LPAM)

(3) **Proceed with the establishment of Low Power Radio stations on the AM Band -- which the Commission has already considered through the solicitation and review of Comments from interested parties in Docket RM-11287.**

The Amherst Alliance urges the Commission to either:

- (i) Issue a final rule in Docket RM-11287, based on its review of the public input it has already received;**

Or

- (ii) If the Commission is not satisfied with the Low Power AM (LPAM) proposals it has already received, then re-open Docket RM-11287 for the solicitation and review of new proposals to initiate and structure a Low Power AM Radio Service.**

The Commission wisely opened Docket RM-11287 in response to a Petition For Rulemaking by 5 parties, including The Amherst Alliance.

After public comments were received in this Docket, without ensuing action by the Commission, the 5 original parties joined 7 new parties to submit a revised proposal for an LPAM Radio Service. This revised proposal was made administratively simpler than the original proposal. In addition, the proposal represented a compromise consensus among all 12 of the LPAM advocates who were nationally active at the time.

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The second proposal envisioned using the currently established NTIS Radio Service as a starting point for technical design of the LPAM Radio Service. It also envisioned that the new LPAM radio stations, like existing NTIS radio stations, would have a uniform power ceiling of 10 watts.

Docket RM-11287 now contains two different proposals for structuring an LPAM Radio Service, along with numerous public comments on the concept of LPAM. If the Commission wants to receive more LPAM proposals, and/or to receive more input from interested parties, we urge it to specify its concerns and re-open Docket RM-11287 for additional input. If the Commission has already received the input it needs, we urge it to proceed with issuance of a final rule to establish LPAM in America.

In either case, we ask the Commission to take Docket RM-11287 out of limbo -- and take action on LPAM.

Extending, to Class D Educational Stations,
Whatever New Protections and/or Privileges May Be Established For LPFM
Stations

(4) Extend to the remaining Class D educational stations whatever new protections and/or privileges the Commission decides to extend to LPFM stations. Alternatively, allow Class D stations the alternative of becoming LPFM stations.

Class D educational stations are, in at least some respects, the precursors of modern LPFM stations. The “grandfathered” Class D stations that remain On Air are also an “endangered species”, shrinking in number through acquisition and displacement.

Some individual Class D educational stations have launched heroic efforts to defend themselves when threatened by acquisition or displacement. As a national group, however, they do not appear to have networked with each other to form a collective voice that can be heard in Washington.

Because Class D educational stations are in some respects our predecessors, and because they also provide services that are important and rare, the LPFM stations within The Amherst Alliance are committed to doing what we can to keep the surviving Class D stations alive.

We hope that the Commission will join us in viewing Class D educational stations as a living part of our nation's broadcasting heritage. Whatever the Commission does to help LPFM stations survive and grow, we hope it will also do to help Class D stations survive and grow. This *could* include offering them the option of becoming LPFM stations themselves.

Conclusion

For the reasons we have stated herein, The Amherst Alliance urges the Federal Communications Commission to adopt Amherst's recommendations.

Respectfully submitted,

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Dated: January 23, 2008

I hereby certify that an electronic copy of these Comments has been sent this day to Pete Tridish of the Prometheus Radio Project and Parul Desai, Esquire, of the Media Access Project.

Signed: Don Schellhardt, Esquire
23, 2008

Dated: January